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Sent: 9/2/2010 11:46:00 AM
Subject: NEPA and Section 106 Update on the Honolulu Transit Project

Dear Consulting Parties,

Thank you for your continued patience and involvement with the Honolulu High-Capacity Transit Corridor NEPA and Section 106 processes. As you are aware, FTA published the Final Environmental Impact Statement for the proposed project at the end of June. In the initial publication of the FEIS, FTA included a 30-day comment period for comments related to the refinement of the design of the Airport Alternative. Due to requests received, FTA extended that comment period an additional 15 days and then an additional 10 days ending on August 26th.

Because of continued discussions with signatories and invited signatories on the draft programmatic agreement, FTA chose to publish the FEIS with an updated version of the draft PA rather than wait to publish the FEIS with an executed PA. The comment letters on the FEIS reveals some confusion on the NEPA and the Section 106 processes, linkages, and their requirements.

Section 800.8 of the implementing regulations for National Historic Preservation Act lays out a process that Federal agencies may use for coordinating the NEPA Process with the Section 106 process. For the Honolulu project, we are coordinating the NEPA and Section 106 review responsibilities, but we are not explicitly following the procedures outlined in Section 800.8.

Resolution of the Section 106 process is when a PA or MOA is executed. FTA and the project sponsor are then bound to implement the terms of either of those agreements.

Resolution of the NEPA process occurs when FTA issues a final determination in the form of either a categorical exclusion, a finding of no significant impact for environmental assessments or, in the case of this Honolulu Project Environmental Impact Statement, a record of decision (ROD). In the ROD, FTA must state, per Section 1505.2 of the NEPA Implementing Regulations and Section 771.127 of FTA's Implementing Regulations, what alternative was selected, the basis of that decision, and whether all practicable means to avoid or minimize environmental harm have been adopted. Part of the basis of the decision would involve the outcome of the Section 106 process. FTA and the project sponsor are required to implement the terms described in the record of decision.

FTA's practice has been to try and resolve the Section 106 process prior to issuing a final environmental impact statement. However, including an executed PA or MOA in the FEIS is not a requirement.

FTA is continuing to work with the signatories and invited signatories to flesh out additional details in some stipulations in the programmatic agreement. We have made a lot of progress and are hoping to agree on a draft PA that we can share with you, the consulting parties, in mid-September. FTA will not issue a NEPA record of decision prior to executing a PA.

Please contact me if you have questions.

Thank you,

Liz

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